

WATER COUNCIL MEETING

NH Dept. of Environmental Services
29 Hazen Dr., Concord, N.H.

March 12, 2014
9:00 a.m.

Members present: Councilors Butler, Henderson, Hinds, O'Brien, and Varotsis

Members absent: Chairman Gilbert, Councilors Gegas, Gosse, Lyons, Rastallis, and Rawnsley

Also present were Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk

The meeting began informally at 9:14 a.m.

1. Approval of Minutes of the October 9, 2013 Meeting

As no quorum was present the minutes were not voted upon.

2. Report from Commissioner Burack

Commissioner Burack spoke to the Council in regards to the replacement of the Water Division Director, Harry Stewart, who is not seeking reappointment. It is a 4 year term which requires a P.E. license. Recruitment has begun in various venues, including nationally. 4 candidates have applied and 2 are going on through another round of interviews. When a recommendation is going to be made that person's name will come before the Council. The Chairman will be contacted and he will determine how to proceed from there.

3. Status of Appeals

Appeals Clerk, Paula Scott, presented an update on the following appeals:

I. New Appeals

II. Decision and Orders that need to be written finalized and issued.

Docket No. 13-05 WC – Colby Brook Park Realty Trust

Re: 6/11/13 Administrative Order No. 13-010 WD

Hearing Officer: David Conley, Esq. assigned on 9/11/13

Status: July 11, 2013 received Notice of Appeal. 7/12/13 issued receipt of appeal letter.

Council to accept or dismiss appeal at the August 14, 2013 meeting. 8/26/13 received

Appearance of Kerry Barnsley for the Department and received Amendment to the Administrative Order being appealed. As the August meeting was cancelled, Council to act on

Notice of Appeal at the September 11, 2013 meeting. Appeal accepted by the Council

9/11/13. 9/12/13 issued appeal accepted letter. 9/18/13 issued notice of Pre-Hearing

Conference(PHC) scheduled for October 22, 2013 at 9:30 a.m. 10/17/13 received Assented-

To Motion to Continue PHC. 10/18/13 issued letter granting motion to continue PHC and

rescheduled PHC to Monday, October 28, 2013 at 11:30 a.m. 10/25/13 received DES' Motion

to Dismiss. 10/29/13 issued Pre-hearing Order with hearing scheduled for February 12, 2014

at 10.a.m. November 1, 2013 received Motion to Allow Late Entry of Objection and Objection

to Motion to Dismiss. 11/6/13 received Objection ot Motion to Allow Late Entry of Objection

and Response to Appellant's Objection to Motion to Dismiss. 11/27/13 received DES' status

report. December 2, 2013 issued Order on Motion to Allow Late Entry of Objection and Motion to Dismiss; Motion to Dismiss was granted. January 2, 2014 received Motion for Rehearing. 1/7/14 received Objection to Motion for Rehearing. 1/28/14 issued Order denying Motion for Rehearing. FYI, Appellant filed with Supreme Court.

III. Hearings or PHCs Pending

Docket No. 13-01 WC – Edward and Robin Monty

RE: 12/05/12 Subsurface construction Approval No. 2012111282 issued to Hanna E. Perutz, Trustess

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Recused Member: Deborah Hinds

Status: January 3, 2013 received Notice of Appeal. 1/4/13 issued receipt of appeal letter. 1/28/13 received Motion to Dismiss from permittee. February 7, 2013 received Objection to Motion to Dismiss. Council accepted the appeal on 2/13/13 and appeal acceptance letter issued on 2/14/13. 2/26/13 received letter from permittee. 2/28/13 received appearance from Robert Murphy, Jr. for the permittee. March 13, 2013 received appearance from Richard de Seve for DES. April 10, 2013 issued Order on Motion to Dismiss which was denied. 4/11/13 sent Notice of Pre-hearing Conference schedule for May 13, 2013. 5/8/13 sent Notice of Unexpected Conflict, Hearing Officer unable to attend scheduled PHC via email. 5/9/13 sent Notice of Rescheduled PHC, scheduled for 5/17/13. Pre-Hearing Order(PHO) issued on 5/17/13 continuing the PHC. 6/5/13 received DES' Motion to Stay. Hearing Officer to rule on this. June 13, 2013 received Objection to Motion to Stay and Assented-to Motion to Stay. 6/14/13 issued ruling on Motion to Stay, which was granted, with a status report due by September 15, 2013. 9/13/13 received Appellant's Status Report.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

Dockets No. 12-01 WC – David Sundman, et al.

Re: 12/19/11 Alteration of Terrain Permit No. AoT-0353 for Dalton Valley Drag

Hearing Officer: David Conley assigned on 2/9/12

Status: Received appeal that appears to be timely on January 18, 2012. Issued receipt of appeal letter on January 20, 2012. Council accepted the appeal Feb. 8, 2012, notice was issued Feb.9, 2012. Mar. 20, 2012 received Motion to Continue PHC. Mar. 26, 2012, Motion was granted. Rescheduled PHC for May 2, 2012 at 9 a.m. At the Council's 4/11/12 meeting, the Council voted to consolidate appeal Docket Nos. 09-05 WC – North Country Alliance for Balanced Changed and 12-01 WC David Sundman, et al. Notice of the consolidated appeals and PHC were issued April 12, 2012. PHC was held on 5/2/12, a second PHC is scheduled for Aug. 27, 2012 @ 9 a.m., and a hearing is scheduled for Sept. 12, 2012 @ 10 a.m. Notice given 5/2/12 via PHO. 8/23/12 received Appellant's Partially Assented-To Motion to Continue Hearing and PHC; Appellant North Country ABC's Motion for Partial Summary Judgment; and Appellant North Country's ABC's Memorandum in Support of Motion for Partial Summary Judgment. 8/27/12 received Stipulation to Dismissal of Appeal of Permit WPS-8289A. 8/30/12 Order regarding Dismissal of Appeal by agreement was issued. In accordance with the dismissal, Docket No. 09-05 WC Dalton Valley Drag, LLC is withdrawn from the Council's docket. September 4, 2012 received Status Update from the Department regarding Docket No.12-01 WC. The license action is under Reconsideration. 9/13/13 sent letter requesting status of appeal be filed no later than October 9, 2013. 10/9/13 received request for extension to file status report. 10/10/13 issued letter granting requested extension to file status report, which is due no later than 10/25/13. 10/25/13 received appellants' status

report requesting hearing on Motion for reconsideration of License action taken by the Department. November 15, 2013 issued letter regarding request for hearing, which states that the matter is not within the Water Council's jurisdiction.

Docket No. 12-19 WC – Cities of Rochester, Dover and Portsmouth, NH

RE: 11/5/12 Certification of NPDES Permit No. NH0100196 issued to the Town of Newmarket(PNA filed 12/5/12)

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Status: January 18, 2013 received Notice of Appeal. 1/25/13 issued receipt of appeal letter.

February 4, 2013 received Appearance for Atty. Evan Mulholland. 2/8/13 received Joint Motion to Continue. Council accepted Appeal and granted Joint Motion to Continue on 2/13/13 with Notice issued on the same date. No action required until final disposition of United State Environmental Appeals Board (EAB) and Federal Court.

Docket No. 12-20 WC – Cities of Rochester, Dover and Portsmouth, NH

RE: 11/5/12 Certification of NPDES Permit No. NH0100871 issued to the Town of Exeter(PNA filed 12/5/12)

Hearing Officer: David Conley, Esq. assigned on 2/13/13

Status: January 18, 2013 received Notice of Appeal. 1/25/13 issued receipt of appeal letter.

February 4, 2013 received Appearance for Atty. Evan Mulholland. 2/7/13 received Joint Motion to Continue. Council to accept or decline appeal. Council accepted Appeal and granted Joint Motion to Continue on 2/13/13 with Notice issued on the same date. No action required until final disposition of United State Environmental Appeals Board (EAB) and Federal Court.

Docket No. 13-06 WC – Old Dutch Mustard Co., Inc.

Re: 7/19/13 Administrative Order No. 13-012 WD

Hearing Officer: David Conley, Esq. assigned on 9/11/13

Status: August 19, 2013 received Notice of Appeal. 8/20/13 issued receipt of appeal letter.

Council to accept or dismiss appeal at its September 11, 2013 meeting. If the Council accepts the appeal the appellant requests a Stay for 60 days to allow the appellant and the Department to discuss settlement. Appeal accepted and Stay granted 9/11/13. 9/12/13 issued appeal accepted letter which also granted the requested 60 day Stay. 9/16/13 received Appearance from Atty. Mary Maloney for the Department. October 18, 2013 sent notice of PHC schedule for November 13, 2013 at 1 p.m. PHC was held on 11/13/13/ and a second PHC is scheduled for January 13, 2014. 2nd PHC was held on 1/13/14. 1/16/14 issued Pre-hearing Order where the Parties have agreed to stay appeal pending civil action.

4. New Business

a. Env-Wq 909 Certification Youth Skill Camps

Debra Sonderegger and Jocelyn Weldon, Drinking Water Ground Water Bureau

Questions and comments were received.

b. Env-Wq 901-908 Youth Recreational Camps

Debra Sonderegger and Jocelyn Weldon, Drinking Water Ground Water Bureau

Questions and comments were received.

5. Old Business

6. Next Meeting
TBD

7. Adjournment

Meeting was concluded at 9:47 a.m.